

### **REMARKS**

As noted in the previous response, claims 41–51 are copied from U.S. Patent Application Serial No. 11/668,124, filed January 29, 2007 (“the ’124 application”) (now U.S. Patent No. 7,975,594), and Applicant has suggested an interference with the ’124 application. Applicant hereby reiterates his suggestion for interference.

#### *Rejections under 35 U.S.C. § 135(b)(2)*

In the Office action, claims 41–51 are rejected under 35 U.S.C. § 135(b)(2) “as not being made prior to one year from the date on which application serial no. 11/668,124 (now U.S. Patent No. 7,975,594) was published.” OA at 2. Applicant respectfully requests reconsideration of the rejection. Pursuant with an interview with supervisor Michael Carone on October 24, 2011, applicant understands that the rejection will be withdrawn for at least the following reasons.

“[A] rejection of the claims of the application (being examined) under 35 U.S.C. § 135(b)(2) should be made only if the application being examined was filed after the publication date of the reference.” MPEP § 715.05. *See also* 35 U.S.C. § 135(b)(2) (“A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an application published under section 122(b) of this title may be made in an application filed after the application is published only if the claim is made before 1 year after the date on which the application is published.”) (emphasis added). The application being examined was filed August 9, 2007, several months prior to the publication of the cited reference on July 10, 2008. Thus, 35 U.S.C. § 135(b)(2) is inapplicable and cannot be used as a basis to reject the present claims. Applicant requests that the rejection be withdrawn.

**CONCLUSION**

In view of the foregoing, it is submitted that the present claims are in condition for allowance. Because the present claims are substantially the same as the claims in U.S. Patent No. 7,975,594, Applicant respectfully suggests that an interference be declared between the '605 application and the '594 patent. If the Examiner has any questions or matters that can be expediently handled by telephone, he is encouraged to contact the undersigned at (310) 788-3271.

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Respectfully submitted,

By           / Joseph P. HAMILTON /            
Joseph P. Hamilton  
Registration No.: 51,770  
PERKINS COIE LLP  
P.O. Box 1208  
Seattle, Washington 98111-1208  
(310) 788-3271  
(206) 359-9000 (Fax)  
Attorney for Applicant